Supreme Court, U.S.
FILED
FEB 14 2006
OFFICE OF THE CLERK

No. _____

In the

Supreme Court of the United States

PRINCESS MCCULLOUGH, pro se and
HENRY MCCULLOUGH, pro se,

Petitioners,

v.

SCOTT HALL ORGANIZATION ENTITY JOHN CARGILE AMERICAN ORGANIZATION ENTITY CATHOLIC DIOCESE'S PROPERTIES OF FORT WAYNE-SOUTH BEND INDIANA BARNES & THRONBURG PROPERTIES ORGANIZATION ENTITY ET AL

Respondents

Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Princess McCullough, pro se
Henry McCullough, pro se
2043 South Bend Ave Suite 361
South Bend, Indiana
(574) 273-6096

SUMMARY OF QUESTIONS PRESENTED

1. Is this landmark case of significant national and state importance to American Citizens of African Heritage and those of Non-Caucasian Identity, due to or because it is the heart of United States Constitution and State of Indiana Constitution protecting individual rights given to American, and Non-American Citizens (*under American authority*), who are of Caucasian Identity?

2 Can any individual be denied entry and/or evicted and/or prevented entry into or upon Diocesan Properties by the Diocese Inc. Properties employee performing his/her duty, if properties are used for county, state and federal election voting?

3 Are State and Federal Courts Constitutionally obliged to instruct and protect pro se litigants as to their rights to appeal a Court's decision and the time limits imposed upon all parties, when attorneys and respondents fail to state in writing the consequences upon the Petitioners pro se's failures to act in a timely manner?

4 The broader question being, is whether American Citizens of African Heritage; those in alikeness who are of non-Caucasian Race; members of the third-age generation; the disabled of all Heritages and Caucasian Identity(s), are to enjoy free exercise, *Freedom of Religion, Freedom not to believe*, the right to redress, freedom from involuntary servitude; due process of law and equal justice under the law, as guaranteed to all Americans and all Peoples, by the Constitution of the United States in the 1st, 5th, 13th, 14th Amendments, and by the State of Indiana Constitution Articles 1, Sections 4, 12, 20, and 37?

QUESTIONS 1st, 5th 13TH 14th AMENDMENTS

1. Can One Organization Entity et al behaving as a Destructive Cult deny millions of faithful Americans redress for civil extreme secular acts and behaviors?

2. Can One Organization Entity et al. deny millions of registered members, the Body of the Church, Freedom of Religion?

3. Can One Organization entity et al. have the right to defame and scandalize millions of faithful members by their extreme secular acts, behaviors and then hide behind Church Autonomy Doctrine to protect its monetary interest?

4. Can One Organization entity et al. re-designate the respondents without the approval of the Court and petitioners?

5. Can One Organization Entity et al. threaten and intimidate petitioners to dismiss Cause in written letter after receiving a fair settlement offer?

6. Can One Organization entity et al, move Cause from State Court to US District Court without all respondents signing the petition?

7. Can the US District Court apply time limitations to the petitioners pro se if the Honourable Court or Attorney of record did not notify petitioners of the consequences of the magistrate's order?

8. Can the petitioner's Cause be retained and heard in both the US District Court and the State Court for respective claims and complaints? Can a State Court stop petitioners' Cause of Action, denying due process of law?

9. Can a magistrate judge decide a motion without a verbal or written consent of reference from all parties?

10. Can a university-seminary under the cover of religion be liable vicariously for extreme secular abusive acts of its graduates who are priests, in a position of authority, due to inadequate education, training and counseling while the religious university/seminary receives state and federal funding.?

11 Can the U.S. District Court have jurisdiction over a Cause that was improperly removed to that court?

12, Can a paid employee use coercive tactics to force perfect attendance upon an American Citizen serving as a volunteer in his/or her God-gifted laity ministry?

REMAINING RESPONDENT(S)

(American Organization Entity Respondeat Superior Defendant(s))

1. Edward Malloy Past President-
2. Present President of *University of Notre Dame du Lac's Properties-
3. Peter Jarret-
4. Wilson Miscamble President-
5. Moreau Seminary's-*Properties-
6. Robert-Lengerich-
7. *John-D'Arcy's-
8. *John D'Arcy* *Catholic Diocesan-Properties of Fort Wayne-South Bend Indiana Inc.-
9. William Schooler-
10. Daniel Scheidt-
11. Daniel Jenky-
12. *St. Pius X Parish's Church Properties-
13. *St. Pius X Parish's Council's Properties-
14. *St. Pius X Parish's Choir Properties-
15. Henry Ciszczon-
16. *Knights of Columbus Properties Council 4263

*Footnote

To cover liability properties under Bishop's authority are used for liability insurance purposes

TABLE OF CONTENTS

Questions Presented.....i
List of Remaining Respondents.....iv
List of Opposing Attorney(s).....xiii
Table of Contents.....v
Table of Cited Authorities and Statues.....vi
Table of Appendix.....xii
Opinions Below.....1
Statement of Jurisdiction.....1
Constitutional and Statuary Provisions.....1
Statement of Cause.....3
Reasons for Granting Petition.....17
Conclusion.....23

TABLE OF CITED AUTHORITIES

Brakauskas v. Fort Wayne South Bend Catholic Diocese, Inc, Supreme Court of the United States. no. 03-952, 124 s. ct. 1602;158l. ed. 2d 244; (2004) *(V*erification of One organization Entity-Diocese and University of Notre Dame.....14

Brown v. Board of Education, 347 US 483(1954) (Due process and Equal justice under the law*)*.....14

John Doe v. Robert I. Kerwood-969 F. 2d 165 US Court of Appeals for the Fifth Circuit No. 91-8397, August 26, 1992; and *Loftis v. United Parcel Service et al* No. 01-00267, Appeal from the US District Court for Eastern District of Tennessee at Knoxville (Defective removal of Cause from State Court because all defendants did not sign the petition).....10

Kalan v. City of St. Francis, No. 00-2949 U. S. Court of Appeals for the Seventh Circuit, December 17, 2001(Lack of jurisdiction for magistrate judge to hear a Cause when no signed consent of reference exist).....8

Konkle v. Henson, 672 N.E. 2d 450, 456 (Ind. CT. App. 1996)*(*the One Organization Entity et al cannot hide behind the First Amendment to avoid liability after committing secular acts against adult parishioners).....13

Jan Maliki et al v. Jane Doe, et al No. SC01-179, Supreme Court of Florida March 14, 2002 (the One Organization Entity et al cannot hide behind the First Amendment to avoid liability after committing secular acts against adult parishioners. An additional list of authorities are listed from 10 different States).....13

Mary M. v. City of Los Angeles No. S005910, Supreme

Court of California, 54 Cal. 3d 202 14 P.2d 1341, 285 Rptr. 99, 991, (Liability of Employer-Doctrine of Respondeat Superior(s).....13

Thomas v. Whitworth No.96-8482, US 11th Circuit Court of Appeals, March 5, 1998).(Lack of jurisdiction for magistrate judge to hear a Cause when no signed consent of reference exist).....9

Hall v. Sharpe. 812F.2d 644-47 (11th Cir. 1987) (Lack of jurisdiction for magistrate judge to hear a Cause when no signed consent of reference exist).....9

Fowler v. Jones 899 F 2d 1088 1092 (11th Cir. 1990).(Lack of jurisdiction for magistrate to hear a Cause when no signed consent of reference exist).....

Davis, as next friend of La Shonda D. v. Monroe County Board of Education et al. US No. 97-843 Decided May 24, 1999(Funding recipient acts with deliberate indifference and victim is harmed by harassment).....7

United States Morrison 529 US 598 627 2000 violence on women causes should be heard in State Courts.....13

STATUES

28 U.S.C. 1446(a) Procedure for Proper Removal (*requires each Defendant/Respondent(Respondent(s) officially joined the removal petition to validate the removal as proper)*.....

.....10

28 U.S.C. 1445(d)-Nonremovable actions-*(a civil action in a state court arising under section 40302 of the Violence Against Women Act of 1994 may not be removed to any court of the United States*.....11

28 U.S.C. Section 636(c) Consent of Reference for magistrate to hear a Cause *(All parties must knowingly and voluntarily consent to the reference*.....12

Fed. R. of Civ. Proc., Rule 73(a)(b), Magistrate Judges: Trial by Consent and Appeal Options.....9

28 U.S.C. 1447(c), Improper removal *(to a District Court prevents the District Court from having subject matter jurisdiction..)*.....11

42 U.S.C. Section 1983, Civil Rights (*Supports a citizen's right for redress and due process)*.....17

US Constitution, Amendments 1, 5, 13, 14 Section 1, respectively, (*Free Exercise-Freedom of Religion; Due process of law; Freedom from involuntary servitude; Equal justice under the law)*.....21

18 U.S.C. Section. 13981(a) Civil Rights (*to protect the civil rights of victims of gender violence*).....11

10. 18 U.S.C. Chapter 13 Civil Rights Section 241 (*protection from a conspiracy against rights)*.....11

CHURCH DOCTRINE TO BE REVIEWED WITH NEUTRAL PRINCIPLE ALL CHURCH

(For Public Viewing on internet (vatican.va)

(Documents filed into the Federal Records of the US District Court for Northern Indiana South Bend Division Cause 3:04 CV 274 RM); State Court; State Court of Appeals; State Supreme Court)

CNY Feature-"The Sin of Racism-Excerpts from the US Bishops' Pastoral Letter on Racism in Our Day" Nov. 14, 1979, 20th Anniversary of the Pastoral Letter.....

CNY in celebration of Black History Month 1999 and the entire pastoral letter "Brothers and Sisters to Us", US Catholic Bishops Pastoral Letter on Racism.....12

Pontifical Council For Justice and Peace Contribution to World Conference *Against Racism, Racial discrimination, Xenophobia and Related Intolerance* (Durham, 31 August-7 September 2001).....12

Declaration on Religious Freedom *Dignitatis Humanae* Right of the Person and of Communities to Social and Civil Freedom in Matters Religious as Promulgated by His Holiness Pope Paul VI on December 7, 1965 (Second Vatican Council.....21

Ex Corde Ecclesiae On Catholic Universities-John Paul II-Apostolic Constitution 1999.....20

Holy Father's Addresses to Members of Pontifical Council for Culture January 13, 1983.....19

SPECIAL RELEVANT DOCUMENT

Women's Rights are Human Rights, Gender dimensions of racial discrimination United Nations OHCHR (2003) Violence on Women Reports to the 59th Session of the Commission on Human Rights-United Nations April 2003.....17

RELEVANT COURT ORDERS *(See Appendix)*

November 18, 2005, The Honorable US Court of Appeals affirms the opinion of the US District Court (thus denying petitioners (American Citizens) redress, due process and equal justice under the law(No. 05-3090).....1A

June 14, 2005 Honorable Chief Judge Miller, US District Court, denies Petitioners'(American Citizens) Motion for Leave and Writ of Error Petitioners' motion for leave to reopen Cause for the purposes of reviewing the magistrate's denial of motion to remand (thus denying redress, due process of law and equal justice under the law) (No. 3:04 CV 274 RM).....4A

June 26, 2004 Court Order signed by Honourable United States Magistrate Judge Nuechterlein placing a Stay on Discovery plan pending decisions on the numerous Motions to Dismiss, the Motion to Deny the Motions to Dismiss and the Motion for Default Judgment(thus denying due process of law)(No. 3:04-CV-274-RM) (*See Federal Court Records)*.....

June 7, 2004 Court Order signed, by Honourable United States Magistrate Judge Nuechterlein denying Petitioners motion for remand without a consent reference for jurisdiction signed by Petitioners and not informing petitioners of the consequences of the order.(thus denying due process)(No. 3:04 CV-274 RM) 11A

TABLE OF APPENDIX

Appendix A (U.S, Court of Appeals Order November 2005).....

Appendix B (US District Chief Judge Miller's Opinion June 2005).....

Appendix C (State Judge Manier's Order, January. 2005....

.....

Appendix D (US District Magistrate Judge's Order June 2004).....

Appendix E (State Judge Whitman's Order of Retention September 2004).....

Appendix F (List of the Locations of the relevant State and Federal Records).....

Appendix G (Petitioners' Voluntary Dismissal, Without Prejudice October 20, 2004 from US District Court).....

OPPOSING ATTORNEYS

Mark J. Dinsmore, Esq.
Barnes &Thronburg LLP
11 South Meridian Street
Indianapolis, IN 46204; Telephone 317-236-1313

Richard A. Nussbaum, II, Esq.
5th Floor-Plaza Building
210 S. Michigan Street
Post Office Box 300
South Bend, IN 46601; Telephone 574-234-3000

Damon R. Leichty, Esq.
Barnes &Thronburg LLP
600 1st Source Bank Center
South Bend, IN 46601;Telephone 574-233-1171

John R. Obenchain, Esq.
Post Office Box 4577
South Bend, IN. 46634-4577; Telephone 574-233-1194

Scott A. Loitz, Esq.
Post Office Box 4577
South Bend, IN. 46634-4577; Telephone 574-233-1194

---

*Footnote

Petitioners requested an investigation into the manner in which the above listed attorneys of record went beyond the scope of being officers of the court in that they caused material harm unto Mr. and Mrs. McCullough pro se by not informing them in writing the consequences of not answering all motions in time limitations in a timely manner. Their actions caused upon the petitioners irreparable harm and continues to cause them material harm. Missing video tapes given to Church members, along with other vital evidential material presently is unaccounted for. Petitioners humbly pray this Honourable Court will direct all attorneys involved to answer before Her, along with the conflict of interest complaints. (Why are 5 attorneys coming after petitioners?)

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit was decided November 18, 2005 and is unpublished.-See Appendix A for complete accurate and true text.....

STATEMENT OF JURISDICTION

The jurisdiction of this Honourable Court is invoked under 28 U. S. C. Section 1254(1).....

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First, Fifth, Thirteenth and Fourteenth Amendments; Free Exercise-Freedom of Religion; Due process of Law; Freedom from Involuntary Servitude, Equal justice under the Law and protection of Women from Gender violence).....

42 U.S.C. Sect 1983-Supports a Citizens Rights for Redress.....

28 U.S.C. 1446(a) Procedure for Proper Removal to Federal Court.....

28 U.S.C. Section 1445(d) Nonremovable Actions-violence on
women.....

28 U.S.C. Section 636(c) Consent of Reference for Magistrate Judge.....

28 U.S.C. Section 1447(c) Improper Removal to a US District
Court.....

Fed. R. Civ P. Rule 73,(a)(b) Magistrate Judges, Trial by Consent and Appeal Options.....

18 U.S.C. Sect. 13981(a) Civil Rights.....

18 U.S.C. Chapter 13, Civil Rights, Section. 241.....

STATEMENT OF THE CAUSE

Petitioners Mrs. McCullough and Mr. McCullough are pro se American Citizens of African Heritage, members of the third age generation and Mrs. McCullough is a disabled federal servant. Mr. McCullough is a Vietnam Era veteran and disabled.

Both in 2000, 2001, 2002, are evicted from the Catholic Church properties, Mr. John Cargile's (collectively Mr. Cargile) spoken words, actions, behavior, deeds "I told you back in September when I auditioned you that you had to promise me that you would always be on time, that you could never miss any of my church choir rehearsals because my rehearsals are the most important part of the Catholic Church. I told you then that I did not have time to be following around with your illness.

This church does not have time to be fooling around with your illnesses. Your employment is not as important as this church Choir. I require the same of everyone. Besides you are a liar. You have never been sick. You were never in the hospital. You will have to leave this church. You cannot rehearse with this choir. It is unfair for me to allow you to stay in this church." Common law is not fooled, when the interpretation of Mr. Cargile's words are clear, "I don't want you niggers in my choir and I sure as hell don't want you in this church!"

On each separate occasion Mr. and Mrs. McCullough were evicted from church property when they returned after Mrs. McCullough recovering from, serious illnesses and/or hospitalizations. Mr. Cargile a paid employee of the catholic diocese clearly excommunicates them from their laity ministry in the Holy Roman Catholic Church, after decades of faithful service from the Church and their God-gifted laity ministries of the Eucharist, serving the poor, the sick, the bereaved, and singing in both the parish choir and the resurrection choir, after their absence from their ministries due to physical illness.

Mr. Cargile spoken words, actions, behaviors, are approved Mr. Jarret "I believe John when he said I was afraid she would take it like that"); Mr. Schooler, Mr. D'Arcy, Mr. Malloy, Mr. Miscamble and other unidentified Respondeat Defendant Superiors.

Mr. Schooler, present priest at St. Pius X Catholic Church Croperties, states these words in the 2002 meeting, Mr. and Mrs. McCullough scheduled, "I have over 2500 families to worry about. (meaning I don't have time to be worrying about you insignificant niggers)"! I agree with John you cannot come back"!

No formal letter was every written to petitioners stating the wrong that took place against them after the firing of Mr. Cargile that took place in 2003, and respondeat superior defendants knew Mrs. McCullough was admitted in their hospital 2003 for serious shoulder surgery and she was again re-admitted to St. Joseph Regional Medical Center 2004, by ambulance, due to high fever of 105 degrees with viral flu.

Mr. McCullough's state health care insurance is Advantage catholic church faith based that is a religious organization paid from state tax dollars and forcing state employees to enter only catholic hospitals in and out of state, yet hospital employees enjoy their constitutional guarantees, of choosing between secular and non-secular hospitals.

Mrs. McCullough is forced to see crucifixes when returning from MRI, awakening in surgical recovery room, and X-ray, and in her room, along with other catholic symbols and catholic announcements for church masses.

January 2005 Mr. McCullough is forced to retire, from his situation as professor at the second largest state university or college in Indiana due to Mrs. McCullough's continued illness aggravated by her 5 to 8 hours she spent researching and answering endless motions in US district court by respondeat superior defendants and their attorneys whose overall plan was to cause physical harm to her, for their devious purpose of lending to her inevitable demise.

Mrs. McCullough suffers from her severe permanent disabilities related to accepted federal employment injures during her duty as a federal servant. *(shoulders, cervical, lumbar and both lower extremities, and migraines from brain concussions).*[17] Also Mrs. McCullough additional disabilities are *type 2 diabetes, heart failure edema in all extremities, hypertension and asthma. Mrs. McCullough does not drink nor smoke, but has been exposed to second hand tobacco smoke.* Mrs. McCullough is being treated for stress. Several times she is admitted to hospital in town where she did research for this civil matter. She was treated for heart failure, diabetes in the heart unit. Advantage refused to pay for her hospitalization because the hospital was secular claiming for her condition she could have been seen as an outpatient because her condition was not serious enough to be admitted.

These in-hospital admitting decisions are made by Dr. Gabriel, head of Select Management owned by St. Joseph Regional Medical Center that owns Advantage Health Care Insurance. Dr. Gabriel teaches as at respondeat superior defendant University of Notre Dame du Lac's Properties. *See 16 March 2004, 22 March 2004 State Court Filings.*

Mr. McCullough disabilities are *acute asthma* related to service as 1st Lieutenant USA; *type 2 diabetes, left ankle arthritis* from fall at St. Pius X Catholic church properties from improperly lighting at night; high school football injury *lower trauma to back*; college track injury *arthritis left knee*, 2005 behind vehicle hit petitioners vehicle leaving Mr. McCullough with *right leg injuries* requiring recent surgery, vehicle head-on crash leaving Mr. McCullough with *permanent irregular heart rhythm, hyper-tension.*

---

[17]Facts substantiate that when the same paid employee of John D'Arcy's Catholic Diocese's Properties of Fort Wayne South Bend Indiana, Inc. John Cargile, similarly abused a person of Caucasian Identity, he was fired three(3) years later year 2003.

All respondents and their attorneys, attempt to hide the behind church doctrine, "the church has a right to discriminate".

The Honourable Court(s) must tread lightly in Her interpretation of church doctrine, *"the right to discriminate against Her identity of male roles as priests, and female roles as nuns"*. Present day church doctrine does not uphold discrimination against American Citizens of African Heritage, by Her priests, bishops, other laity ministers nor paid employees. Still yet, respondents and their five(5) law firms continue to slander and defame the doctrine of the Holy Roman Catholic Church, in misleading Courts in the church's doctrine, ("*right to discriminate)*".

As a last resort, petitioners filed a civil suit to protect the doctrine of the Holy Roman Catholic Church, to prevent other faithful Catholics from suffering similar extreme secular abuses and to seek relief from the physical harm respondents and now their attorneys cause upon Mrs. McCullough as well as the disparate treatment doctrine of continuing wrong intentional infliction of severe emotional distress, slander, defamation, libel, vicarious liability, separation and segregation based on race, age, disability and gender that perpetrated upon petitioners. Constitutional guarantees of freedom of religion, due process, redress, freedom from involuntary servitude and equal justice under the law

Petitioners filed an amended civil suit 16 March and amended Cause 22 March 2004, naming the members of One Organization Entity and others strongly influenced by the Entity listing the extreme secular disparate actions and behaviors that violated state and federal statues committed in 2002 continuing to present 2006.

Other laity ministers of Caucasian Identity, less than sixty years of age, non-disabled as explicitly named in the Cause, were permitted to return to their ministries after physical or family illness.

Attorney(s) for the One Organization Entity et al. filed a motion in the US District Court in June 2004 that included the statement, *"what the McCulloughs allege probably happened*".

Mr. Cargile's spoken words, behaviors, actions are prompted when he hears a group of bitter, hostile, envious, jealous, and just down right nasty, conniving, scheming, female laity members who are so jealous of Mrs. McCullough's voice, loveliness, kindness to others in bereavement, and the fact that Mr. McCullough upon occasions reject that flirtatious manner towards him, by Mrs. Carol Raab.

This eviction and excommunication violated petitioners Freedom of Religion as guaranteed in the United States Constitution Amendment One and the Doctrine of the Holy Roman Catholic Church. Mr. Cargile's statement(s) of 10/2000-11/2000 to returning Mrs. McCullough who arrived

When intervention was sought from the pastor Peter Jarret, auxiliary bishop Daniel Jenky and the diocesan bishop John D'Arcy, petitioners were met with severe, pervasive and objectively offensive indifference(summed as Depraved Indifference-cover-up).Citing (*Davis, as next friend of La Shonda D. v. Monroe County Board of Education et al.* US No. 97-843 Decided May 24, 1999) The attorney(s) Barnes &

In the late 1990-early 2000s, John D'Arcy diocesan bishop took a video of petitioner Mrs. McCullough without her permission while she was singing in the parish choir and used this video without petitioners' written or verbal permission for the Annual Bishop's Appeal (to raise substantial funds-$ Millions). The extreme highlighting of petitioner Mrs. McCullough, gave the misleading impression certain degree of diversity in the Diocese.

This illegal use of this video continues through present day. Year 2005 was a record year for Mr. D'Arcy who raised

a record of over $50,000,000.00 American Dollars. This continues to cause and/or bring upon petitioner, Mrs. McCullough doctrine of continuing wrong intentional extreme emotional distress.

Individuals or groups of individuals, even present day stop Mrs. McCullough on the street, stating, "I (we) remember seeing you on the Bishop's Appeal and you sang beautifully. You are lovelier in your beauty, in person!" Petitioner Mrs. McCullough was even approached in the hospital during 2003 following her serious, surgery by, a Grandmother visiting her Granddaughter seeking Mrs. McCullough's autograph.

The Attorney(s) for some of the re-designated Respondent(s), on April 26, 2004 filed a Notice of Removal which removed the Cause dated March 16, 2004 to the US District Court. The amended Cause dated March 22, 2004 was never filed in the US District Court as documented in the District Court records. Petitioners, the none moving party(s), filed a Motion to Remand Cause 3:04-CV-02 RM *

This verifies the disparate treatment suffered by petitioners as summarized in the Amended Cause of March 22, 2004 as filed in the State Court.[18]back to the State Court on May 6, 2004. Petitioners did not give a written or verbal consent of reference, for the Honourable United States magistrate Judge Christopher A. Nuechterlein to hear their civil matter before or after he, issued his denial Order.

The Magistrate's Order of June 7, 2004 was contrary to 28 U.S.C. Section 636(c) and Federal Rules of Civil Procedure Rule 73(b), denying Petitioners' Motion for Remand, stating their civil Cause was properly transferred out of State Court into District Court.

Authorities hold that without a signed consent of reference, a District Court Magistrate Judge does not have jurisdiction over the Cause. Citing (*Kalan v. City of St.*

Francis, No. 00-2949 in the US Court of Appeals for the Seventh Circuit December 17, 2001, and *Thomas v. Whitworth* No.96-8482, U.S. 11th Circuit Court of Appeals, March 5, 1998

a. In *Thomas v. Whitmore*, although the Honourable Chief Judge Miller decided to deny petitioners' prayer to reopen their Cause under section 636(c) of Title 28 of the United States Code, 28 U.S.C. §636(b)(1)" Section 636(b)(3) also permits a district judge to assign to a magistrate with or without the consent of parties, "such additional duties as are not inconsistent with the Constitution and laws of the United States.

b. The statue does not afford magistrate judges the right to preside over trials (except for the trial of misdemeanor criminal offenses in accordance with 18 U.S.C. § 3401). Section 636(c) does permit a district judge to designate a magistrate judge to "conduct any or all proceedings in a jury or non-jury civil matter, "but *only*"[u]pon the consent of the parties". *See Hall v. Sharpe*, 812F.2d 644-47 (11th Cir.1987) (observing that section authorizes a magistrate judge to conduct civil jury trials, but stressing that "[e]xplicit, voluntary consent is crucial to this procedure" in order to obviate concerns about constitutionality and protect against the wholesale delegation of certain classes of cases or causes and litigants); *see also Fowler v. Jones*, 899 F2d 1088, 1092 (11th Cir.1990) adding that *"valid consent is the linchpin of 28 U.S.C. §636(c).*

The plain language of the statute establishes that if one of the parties in a civil lawsuit pending before a District Court, states his unwillingness to continue under a magistrate judge, the District Court cannot designate a magistrate judge. "It is a basic right of Petitioners, pro se, in a US District Court to have a United States District Judge, appointed under *Article III of the US Constitution* hear their Cause and any other procedure, without petitioner's consent.

substantially affects Petitioners' rights and causes petitioners material harm. State Court Records verify that the Notice of Transfer filed on April 26, 2004 was not signed (joined) by all respondent(s) as required by 28 U.S.C. 1446(a).

Therefore, transfer to the District Court was improper. Citing (*John Doe v. Kerwood* 969F. 2d 165 US Court of Appeals for the Fifth Circuit No. 91-8397 August 26, 1992; and *Loftis v. United Parcel Service et al* No. 0100267, Appeal from the US District Court for the Eastern District of Tennessee at Knoxville, July 7, 2003," we find that there is a more fundamental defect in the removal procedure Because we find that the removal was defective due to failure of all defendants respondents to join the removal petition".

Petitioners, pro se, are not informed by District Court Magistrate Judge of the consequences of Petitioners not answering Order that denied remand. They believed that once a remand order was denied, they had no avenue of redress by appeal.

Therefore, Petitioners are materially harmed by statue of limitations, mentally, emotionally, physically, spiritually by District Court's Magistrate Judge's ruling denying remand back to the State Court, without proper jurisdiction. Petitioner Mr. McCullough has resigned his situation as a professor to assist his wife of 43 years petitioner Mrs. McCullough and together prosecute this Just Cause . Once Petitioners understood that they were materially harmed, Petitioners filed a Motion for Leave on June 8, 2005, to reopen their Cause, voluntarily closed by Petitioners on October 20, 2004.

There are other statues and authorities supporting Petitioners statement that the removal to the District Court was improper and therefore the District Court does not have subject matter jurisdiction, citing 28 U.S.C. 1447(c), and Cause should be remanded back to the State Court; a. 28 U.S.C. 1445(d) -Nonremovable actions, "A civil action in a State Court arising under section 40302 of the Violence

against Women Act of 1994, may not be removed to any court of the United States."

Petitioners Amended Cause March 22, 2004, clearly documents that petitioner Mrs. McCullough, a women, is coerced, intimidated and harassed causing upon her physical, mental, emotional, and spiritual harm, because of her gender and because of her racial identity as American Citizen of African Heritage in the presence of American Roman Catholic Citizens of Caucasian Identity of the parish after returning from two different hospitalizations.

Petitioner Mrs. McCullough is frightened and fearful, as she reports to her husband petitioner Mr. McCullough. The, then pastor, Peter Jarret announced intention prayer in at least two masses for Petitioner Mrs. McCullough.

The One Organization Entity et al knew or should have known of Mrs. McCullough' serious illnesses. Peter Jarret was in attendance when Mrs. McCullough underwent heart surgery. This is documented in the video tape exhibits in the District Court records.(Citing 18 U.S.C. Sect. 13981(a) "to protect the civil rights of victims of gender violence", and 18 U.S.C. Chapter 13, Sect. 241, protection from conspiracy against rights,".

One of the respondents Carol Raab, as documented in the Amended Cause, told petitioner Mrs. McCullough in 2002 that more than one other laity minister did not want petitioners to serve in the church. Since other laity ministers were welcomed back to serve after extended absences and petitioners, who are uniquely visible, were not welcomed, this documents disparate treatment.

The extreme, secular and abusive spoken words spoken to petitioner Mrs. McCullough, by paid employee John Cargile, at the same time exhibiting a racist, racial intolerant with severe gender bias attitude included, "You were not in the hospital. Your chronic illness has no place in this church and you are not welcomed in this church" and the intent restated by pastor Peter Jarret," you cannot come back to

preserve the cohesiveness of the church", "yes I gave John Cargile that authority", indicates that Peter Jarret permitted racism, xenophobia and racial intolerance in the church contrary to state and federal statues including the Doctrine of the Holy Roman Catholic Church (.citing Pontifical Council for Justice and Peace-"Contribution to World Conference Against Racism, Racial Discrimination, Xenophobia and Racial Intolerance" Durham, 31 August- 7 September 2001,... the source of racism is inadequate (*vatican.va*) education, training and counseling; this document also outlines the reparation method recommended to reconcile cases of racial discrimination) also see the Sin of Racism, a US Bishops' pastoral letter issued in 1979 and 1999, both available for review with Neutral Principle in the District Court record exhibits, June 2004).

Note that after denying the petitioners intervention, Peter Jarret, the pastor in 2002, was, promoted to Vice president of Notre Dame University du Lac by Edward Malloy.

The auxiliary bishop in 2002, Mr. Daniel Jenky who also told petitioners, "Do not worry about it. Just get a glass of wine or something." "There is no need to go the diocesan bishop". Daniel Jenky was soon promoted to full bishop of Quincy Illinois, with the recommendation of the diocesan bishop John D'Arcy..

The diocesan bishop Mr. John D'Arcy refuses to meet with Mr. And Mrs. McCullough to discuss the extreme secular disparate abuses suffered by petitioners. (Depraved Indifference)

Mr. D'Arcy University of Notre Dame du Lac's Properties and its Presidents stole PEM/NZ ASSOCIATES 1776's ©Our Corporations Preventable Reoccurring Liability", that is our System, by building an elevator at St. Mathews Cathedral, without our expressed written permission and all parts of our system, that is designed lock-down, as one attempts to engage it. (e.g. to crash,

causing a roof to collapse. (e.g. when University of Notre Dame du Lac's Properties Presidents made an attempt to engage our system by giving Honourary Ph. D's to two(2) American Citizen of African Heritage not from Michiana many community leaders and citizens of this community chuckled at the fact the same ol', same ol' was still alive, exactly as our system projected.

Respondent(s)' One Organization Entity Catholic Diocese's Properties of Fort Wayne and South Bend Indiana et al knew or should have known that Petitioners were faithful Catholics, and petitioner Mrs. McCullough had been seriously ill because Petitioners had been absent from their ministries of the Eucharist, to the poor, to the sick, to the bereaved and both choirs.

Citing (*United States v. Morrison*, 529 US 598, 627(2000) held that violence against women can not be heard in Federal Court because for this crime State Law predominates) and (*Mary M. v. City of Los Angeles* No. S005910, Supreme Court of California, 54 Cal. 3d 202 14 P.2d 1341, 285 Rptr. 99, 991.) held respondeat superiors share liability for secular abuses of subordinates against the public) (District Court records document basis for liability of respondeat superiors and why secular abuses are not protected by Church Autonomy doctrine in Petitioners' petition before this Honourable High Court of these United States, Her Territories and Her Americas.

Motion for Default Judgment and exhibits filed June 22, 2004) also Citing (*Jan Maliki et al v. Jane Doe, et al* No. SC01-179, Supreme Court of Florida March 14, 2002; and. *Konkle v. Henson*, 672 N.E. 2d 450, 456) (Ind. CT. App. 1996)(Abusers of parishioners cannot hide behind the first Amendment to avoid liability)

Petitioners named the One Organization Entity Properties et al that the respondent(s) are members of or strongly influenced by. 28 U.S.C. 1441(c) states that, at the discretion of the United States District Court, a Cause may

be remanded to the State Court when State law predominates For example in the Amended Cause March 22, 2004, multiple examples of injuries were listed adequately covered by Indiana Code and the Constitution of the State of Indiana with respect to properties.

Citing (***Brakauskas v. Fort Wayne-South Bend Catholic Diocese, Inc.***, Supreme Court of the United States. No. 03-952, 124 S. Ct. 1602;158L. Ed. 2d 244;(2004), -holding that the Diocese of Fort Wayne and South Bend Indiana may communicate with the University of Notre Dame Du Lac because they are under the same authority, the local bishop-One Organization Entity

Also Citing (***Brown v. School Board*** 347 US 483(1954) equal justice under the law) also Citing (Ex Corde Ecclesiae On Catholic Universities, John Paul II, Apostolic Constitution 1999, Part II, Art. 1 par 2, Art 2. par 5, Art. 5 par 1&2) available in US District Court records as exhibit to Petitioners' motion of June 22, 2004) viewed with neutral principle confirms that the respondent(s) are One Organization Entity)(Petitioners' District Court Writ and exhibits of June 8, 2005, are in the record, Exhibit 2, depicts clearly the verified respondent(s) members of the One Organization Entity and those strongly influenced by the Entity).

Some of the re-designated Respondent(s),on April 26, 2004 removed the Cause dated March 16, 2004 to the US District Court. The Amended Cause of March 22, 2004 was never filed in the United States District Court as is documented in the District Court's Record, pursuant to Fed. R. of Civ. P.

Note in the District Court's records of Petitioners' Writ and exhibits, exhibits 3a,3b,and 3c that the stamp on the record filed is uniquely different. The Cause filed in this District Court on April 26, 2004, is stamped rather differently from the regular stamps used on the exhibit items, i.e. original filing March 16, 2004, Cause, Summons and

Amended filing March 22, 2004 in State Court.(See State Records-Sealed Document)

Preliminary examination of the certified copy of Cause sealed and delivered to Petitioners by the Clerk of the District Court reveals obvious anomalies (cover sheet stamp, page 10 and pages 63 et al). Concluding that the Cause filed on April 26, 2004 was not the Amended Cause of March 22, 2004 and not the Cause filed on March 16, 2004 in State Court.

The Stamps on Petitioners' copies are obviously different. This legal concern was raised to District Court Chief Judge Miller but he chose not to elaborate on this issue in his Opinion and Order, Petitioners' Appendix B.

Formal efforts to obtain State Court records for the Honourable US Court of Appeals failed. On July 29, 2005, Petitioners submitted their Transcript Information Sheet as required and sent a copy to Ms Rita Glenn, Clerk of the St. Joseph County Superior Court Mishawaka Division, Mishawaka, Indiana where Petitioners Amended Cause and original Cause are filed.

Petitioners' brief and appendix filed in the US Court of Appeals for the Seventh Circuit August 2005 contain are an exact copy of Petitioners' Transcript Information Sheet which requests the Clerk of the St. Joseph County Superior Court to assemble the Clerk's Records as defined in Indiana State Law for Amended Cause 71D06 0403 CT 00063 and forward the records to the Honourable US Court of Appeals.

August 1, 2005 the Chief Deputy Clerk of the St. Joseph County Superior Court sent a formal letter to Petitioners stating she was not going to send the State Court records These State Records document the anomaly in the stamps used by the St. Joseph County Superior Court Clerk' office and the bad faith and ill will of the respondent(s) and their attorney(s) when they (1)knowingly re-designated respondent(s) without the State Court's or Petitioners' permission;

(2)Respondent(s)' attorney(s) then requested an extension of time to file a responsive pleading for the same listed respondent(s) more than once in April 2004; (3)Respondent(s)' attorney(s) never intended to file a responsive pleading because in a few days filed an improper Notice of Removal to the District Court planning a quick dismissal.

Also in the State Court Clerk's Records are motions and status reports(with exhibits) filed in the State Court on, September 2, 2004, September 29, 2004, October 21, 2004, December 21, 2004 and January 20, 2005 containing a letter history of Petitioners' efforts to resolve civil Cause, a 2004 chronology of events in the State Court, and the initial settlement offered in 2002 by Petitioners.

May 2004, the District Court Magistrate Judge Ordered the Petitioners and respondent(s) to compile a Joint Status report for him to schedule the court. Petitioners arranged a meeting room but respondent(s)' attorneys declined and suggested a phone conference.

During the conference it became clear that respondent(s)' attorney(s) did not wish to answer each question requested by the Magistrate Judge. Petitioners were forced to complete their own Status report. (See District Court records) (another example of bad faith and ill will)

May 2004 the respondent(s) attorney's began to file separate motions for dismissal. As the District Court's records verify, one motion was filed the first week of May 2004 which violated the local rules requiring pro se Petitioners to be notified of the consequences of such a motion.(bad faith and ill will).

June 26, 2004 the District Court Magistrate Judge issued an Order to Stay the plan for discovery pending the various motions being considered by the District Court.(denying petitioners due process).

September 2005 the attorneys for the One Organization

entity et al attached a copy of the Amended Cause to their appendix when answering petitioners' brief to the US Court of Appeals for the Seventh Circuit.

These law firms and respondents knew or should have known that this was not the proper avenue to enter the Amended Cause into the Federal Records.(Another example that violates Fed. R. of Civ. P. Rule 56(g) Bad faith and ill will). (Barnes&Thornburg LLP, knew they were personal lawyers to/for Mr. and Mrs. McCullough. (see all Honourable Courts' records).

REASONS WHY THIS PETITION SHOULD BE GRANTED

Petitioners pray that this Honourable Court will not decide their petition before reviewing the official State and Federal Court Records. The merit and facts of petitioners' Cause are substantiated by the preponderance of true facts and documents filed in the State and Federal Court Records.

Appendix F lists the locations of the relevant State and Federal Court Records.

A magistrate judge denied petitioners' Motion for Remand from the US District Court to the State Court, in June 2004, without a verbal or written consent of reference from the petitioners pursuant to 28 U.S.C. par 636(c).

Under constitutional law, every American Citizen, appearing in a US District Court has the guaranteed right to have their Cause heard by a federal judge appointed under Article III of the US Constitution. Petitioners are materially harmed by the magistrate judge's decision, which also did not inform them of the consequences of his decision, denying petitioners due process.

The State Court Records exhibits that only some of the respondents and their attorneys removed cause from the State Court to the US District Court improperly. Mr. Cargile's whereabouts remain unknown to respondents and to proceed further without his signed authorization, for

removal, deprives him of his own Constitutional rights that also must be upheld.[19]

These respondents and their five(5) law firms consisting of well over 350 string nationwide (possibly gobally) failed to have all respondents join the removal petition pursuant to federal law 28 U.S.C. 1446(a).

Federal law states that if a Cause is improperly removed to a Court of the United States, the US District Court lacks subject matter jurisdiction over such Cause and should remand it back to the State Court pursuant to 28 U.S.C. 1447(c). When the US District Court denied petitioners' Motion for Leave and the Writ of Error in June 2005, petitioners (American Citizens of African Heritage) were denied due process and equal justice under the law.

28 U.S.C. 1445(d) states that" a civil action in a State Court arising under Section 40302 of the Violence against Women Act of 1994, may not be removed to any court of the United States." The Amended Cause filed in the State Court March 22, 2004, clearly documents the violence in the form of coercion, intimidation and harassment upon Petitioner Mrs. McCullough a third age generation woman, known by respondents, to be seriously ill as documented in the video tape included in the District Court Records.

International documents also support women's rights such as Women's Rights are Human Rights. Gender dimensions, of racial discrimination, United Nations, OHCHR(2003) Violence on Women. The merits and facts of the Cause should be sufficient for Cause to receive a fair and proper adjudication in the State Court for state claims and in the US District Court for federal claims. Any procedure that denies petitioners' their rights as American Citizens, denies them due process.

In support of an American Citizen's right for redress and due process, 42 US C. Section 1983 was written. The right

to redress is a constitutional right that underscores much of the US Constitution of the United States. International law supports the principles of justice, truth and the value of the individual. Our founding fathers made sure that these principles were included foremost in our country's achieves-Amendment One.

When the US District Court did not address all issues, petitioners are denied due process. A significant question centers around the time limitation between the voluntary dismissal of the Cause October 2004 and the Motion for Leave and Writ of Error filed eight months later, June 2005.

Petitioners are not advised of the consequences of the magistrate judges' order which denied them due process and is contrary to the local rules of the District Court.

After detailed study, petitioners realized that they are materially harmed and file for leave. June 2005. Arbitrary, the Chief Judge of the US District Court did not address the critical question about the improper handling of the Court Records. Fed. R. of Civ. P. requires safe and adequate handling of the records. Comparison and contrasting of the state records and those filed in the District Court indicates a glaring discrepancy in the clerk's stamp pursuant to Indiana Trial Rule 77(g) requiring proper and adequate handling of case records.

The true and accurate cover pages with the official, stamps are submitted into the record, by petitioners, to verify the discrepancy that occurred after the official filing of the Cause on March 16, 2004, the Amended Cause of March 22, 2004 and the Notice of Removal of April 26, 2004. The District Court records identify the complete official Amended Cause was never submitted to the US District Court.

Federal law 28 U.S.C. 1447(c) states that if a Cause is improperly submitted to the US District Court, the District Court lacks subject matter jurisdiction and should remand the Cause back to the State Court.

Bad faith and ill will identifies, the five law firms for the One Organization Entity et al, intentionally attempted to submit portions of Amended Cause into the federal records by placing the Amended Cause as part of the Appendix to their response brief in the US Court of Appeals for the Seventh Circuit. These attorneys knew or should have known that this submittal as part of an appendix was untimely and improper and violates Fed. R. of Civ P Rule 56(g).

The Amended Cause filed in State Court on March 22, 2004 documents the coercion, harassment, intimidation and humiliating statements and behaviors experienced by petitioners at the hand of the paid employee of the One Organization Entity et al.

The head of the Holy Roman Catholic Church, the late Pope John Paul II, wrote in the Holy Father's Addresses to Members of the Pontifical Council for Culture January 13, 1983.,"Our love for man must give us courage to denounce ideas which reduce the human being to a thing that one can manipulate, humiliate, arbitrarily eliminate".

This address gives clear, unambiguous direction to the global Roman Catholic Church as to the proper treatment expected of each diocese and the churches in each diocese toward its' members, the Body of the Church.. The complete two page document may be reviewed, with neutral principle, in the District Court's Records as part of petitioners' Motion for Default Judgment filed June 2004 (also at vatican.va).

The first Amendment guarantees to each American Citizen free exercise, Freedom of Religion.

When the paid employee of the One Organization Entity et al, Mr. Cargile three(3) years later(2003), abused laity ministers of Caucasian Identity-member of the church in a similar manner to how he previously abused petitioners-also laity ministers and members of the church, the paid employee was fired October 2003.

Following the firing of the paid employee, Petitioners

were not formally connected by written communication from the respondeat superior defendants they were again denied a meeting with the diocesan bishop, head of the One Organization Entity et al.

This lack of formal action by the One Organization Entity et al is the continuing examples of disparate, secular abuses which denies petitioners free exercise, freedom of religion. Petitioners remain sincerely concerned for other faithful Catholics, laity ministers because of the destructive cult behavior and the efforts of the One Organization Entity et al to hide behind church autonomy doctrine that is contrary to the Doctrine of the Holy Roman Catholic Church.

The first amendment and the thirteenth amendment guarantee free exercise and forbids behaviors that promote involuntary servitude. Petitioners were volunteers when evicted and excommunicated from the church and church properties by documented extreme, secular, disparate treatments.

As a result of a root cause analysis of the extreme secular abuses and disparate treatment received from the then pastor Peter Jarret, it was determined that the One Organization Entity members, the University of Notre Dame Du Lac properties and Moreau Seminary properties are at fault.

Peter Jarret, a recent graduate of these institutions, permitted acts of racism, xenophobia and racial intolerance. Peter Jarret suffers from faulty and inadequate education, training and counseling which caused his disparate behavior. The amended Cause documents the extreme spoken words and acts that severely and irreparably injured materially, emotional and Mrs. McCullough physically causing her to be medicated petitioners.

The One Organization Entity are the respondeat superior of Peter Jarret and are therefore responsible for his actions because of improper preparation.

Peter Jarret, who hired John Cargile, is responsible for

faulty hiring and retention, which severely injured petitioners.

Case law authorities as listed in the previous sections held that church leaders and/or employees (*cannot hide behind the First Amendment to avoid liability after committing extreme secular acts against adult parishioners)* (citing Declaration on Religious Freedom-Dignitatis Humanae-Holy Roman Catholic Doctrine available for review with neutral principle in the Indiana Court of Appeals Records" from page 1, Religious freedom, in turn, which men demand as necessary to fulfill their duty to worship God, has to do with immunity from coercion in civil society. ...from page 4.

Henceforth, government is to see that equality of citizens before the law, which is an element of the common good, in never violated, whether openly or covertly, for religious reasons. Nor is there to be discrimination among citizens".

CONCLUSION

Petitioners, Mrs. McCullough and Mr. McCullough pro se, American Citizens of African Heritage, Citizens of Third-age Generation, Citizens with disabilities, petition this Honourable United States Supreme Court, Her Territories and Her Americas to review and; subpoena all Honourable United State 7th District Court Records; to subpoena all records from the Honourable United States 7th District Court of Appeals; subpoena all court records from the Honourable State of Indiana County of St. Joseph Court; subpoena so federal court records; to subpoena all Honourable St. Joseph records; To subpoena County and Honourable State Court records through the American system of justice for those Americans of Caucasian Identity non-violent social justice. The petitioners are pleased to have this opportunity to file this Petition before this Honourable Court with great expectations of being heard on the merits and facts of their Cause.

The Constitution of the United States stands as a single beacon throughout the world, attracting many to our shores. The petitioners humbly believe that those guarantees, so eloquently written, will also apply to all American Citizens regardless of their heritage.(specifically the First, Fifth, Thirteenth and Fourteenth Amendments)

Truly in this country, any One Organization Entity et al, no matter how large and powerful, behaving as a destructive cult(a cult that venerates the leaders instead of God) must stand accountable when committing documented extreme secular abuses against American Citizens. The petitioners await relief in the form of their Cause being Reopened and Remanded back to the State Court where a Motion is pending for Default Judgment because the Respondents and their attorneys never filed or intended filing a responsive pleading. The petitioners pray that after final adjudication, the respondents will have an opportunity to correct their

abusive behavior and prevent it from recurring for the good of the common welfare. The petitioners have disclosed their honourable intentions to distribute the damages, once recovered, as documented in the State Records, for the Good of the Common Welfare, to support social justice for all citizens and to support and defend the Doctrine of the Holy Roman Catholic Church. The petitioners have both taken an oath, "To support and defend the Constitution of the United States against all enemies foreign or domestic". The petitioners cannot turn their heads or move away from the extreme secular abuses they suffered. To ignore these abuses would endanger thousands, perhaps millions of other faithful Catholics who believe in the Doctrine of the Holy Roman Catholic Church, the hierarchy and leaders of the Church and the Constitution of the United States.. The Doctrine of the Holy Roman Catholic Church, similar to many other global religions, teaches the Love of God and the Love for Neighbor. The US Constitution protects the believer and the non-believer.

The amended suit of March 22, 2004 also named properties to include insurance liability.

Petitioner Mrs. McCullough's mother who died November 8, 2005, stated" I do not want to be buried from a church where my children are not welcomed", Mother Carmen;

Father Naro, who adopted petitioner Mrs. McCullough as an adult stated, "Abusive behavior in the Church has scandalized all priests, so fight for your Cause as hard as you can, you're fighting for all of us in the priesthood.

"The US Constitution must be used not so much as a shield for the abusers but as a sword for the victim." American Jurist Prudence:

"

Justice denied anywhere diminishes justice everywhere." Dr. Martin Luther King Jr;.

"Those who would deny freedom to others, do not deserve freedom themselves." President Abraham Lincoln.

"Let Right Be Done"!

Petitioner(s) pray this Honourable Supreme Court of the United States will secure all records of all pleadings and motions in this cause from the Federal and State Court before deciding this Petition. The reasons to grant this petition are listed on the previous pages.

The facts as stated in this petition, in the Federal and State Records are true to the best of Petitioners' knowledge.

Respectfully submitted _____

Princess McCullough, pro se

_____

Henry McCullough, pr se

_____

Notary Public

Stamp

APPENDIX A

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604
Submitted November 17, 2005
Decided November 18, 2005

Before
Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. JOHN L. COFFEY, *Circuit Judge*
Hon. DIANE S. SYKES, *Circuit Judge*

No. 05-3090
Mrs. McCullough
Mr. McCullough,
Plaintiffs-Appellants
v.
SCOTT HALL, et al.,
Defendants-Appellees.
Appeal from the United States District
Court for the Northern District of Indiana
South Bend Division
No. 3:3:04-CV-274 RM
Robert L. Miller, Jr.
Chief Judge

ORDER

Mrs. McCullough and Mr. McCullough were members at St. Pius X Catholic Church in Granger, Indiana, until, they allege, the music director kicked them out without cause. The McCulloughs asked priests and others from the parish, the diocese, a nearby seminary and even the University of

Notre Dame to intervene, but when no one did, the couple brought suit in an Indiana court asking for $250 million in damages. They claimed that the defendants--most, like the bishop for the diocese, having no conceivable connection to the choir dispute--violated their rights under state and federal law, including the First Amendment; the Americans with Disabilities Act of 1990, 42 U.S.C. par 12101 to 12213; and Age Discrimination in Employment Act, 29 U.S.C. par 621 to 634.

The defendants removed the suit to federal court pursuant to 28 U.S.C. par 1441(b), and after the McCulloughs were unsuccessful in getting the action remanded back to the state court, the defendants moved to dismiss on various grounds. The district court never ruled on these motions, however, because the McCulloughs voluntarily dismissed the action pursuant to FED.R. Civ. P. 41(a)(1). More than seven months later, though, the McCulloughs moved for leave to reinstate the suit, essentially complaining that the magistrate judge who issued the order denying their motion to remand lacked authority to rule on the question. The district court declined to reinstate the lawsuit, and the McCulloughs appeal.

We construe the McCulloughs' motion to reinstate their lawsuit as one brought under Fed.R. Civ. P.60(b).(*See United States v. Mt. Vernon Mem'l Estates, Inc.*, 734 F.2d 1230, 1235 (7th Cir. 1984) (noting that "a district court has the authority under Rule 60(b) to vacate a voluntary dismissal and reopen the case"). We review the denial of any Rule 60(b) motion for an abuse of discretion and will rarely disturb a district court's decision on this kind of motion. *Karraker v. Rent-A-Center, Inc.*, 411 F.3d 831, 837 (7th Cir. 2005); *Cincinnati Ins. Co. v. Flanders Elec. Motor Serv., Inc.* Relief under Rule 60(b) is an extraordinary remedy granted only in exceptional circumstances.

Cincinnati Ins. Co. 131 F.3d at 628.

The district court did not abuse its discretion in denying the McCulloughs' motion. The McCulloughs argued that the district court should reinstate their lawsuit so that it might review and overturn the magistrate judge's order declining to remand the action to state court. But any argument they had about the propriety of the removal or the ruling on their motion could have been raised in an appeal once the case was litigated to a final judgment, see R*ohrer, Hibler & Replogle, Inc. v. Perkins*, 728 F.2d 860, 861-62(7th Cir. 1984), and so these questions could not provide a basis for relief under Rule 60(b). See *Bell v. Eastman Kodak Co.* 214 F. 3d 728, 801(7th Cir. 2000) ("The ground for setting aside a judgment under Rule 60(b) must be something that could not have been used to obtain a reversal by means of direct appeal."); *Russell v. Delco Remy Div. of Gen. Motors Corp.*, 51 F.3d 746, 749(7th Cir. 1995)("Rule 60(b) is not an appropriate vehicle for addressing simple legal error; otherwise, a party could circumvent the ordinary time limitation for filing a notice of appeal)) In any event, the lawsuit was patently frivolous, and that was reason enough for the district court not to revive. It. *Cf. Berwick Grain Co. v. Illinois Dept.of Agric.*, 217 F.3d 502,505(7th Cir 2000) ("Pressing to reinstate a lawsuit that cannot be sustained if revived epitomizes bad faith."); *McCurdy v. Sheriff of Madison County*, 128 F.3d 1144, 1145(7th Cir. 1997) ("A frivolous suit does not engage the jurisdiction of the federal courts")

The judgment of the district court is AFFIRMED.

Footnote*

*After an examination of the brief and the record, we concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. See Fed.R. App.P. 34(a)(2)

APPENDIX B
US DISTRICT COURT CHIEF JUDGE MILLER'S OPINION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION
Mrs. McCullough
Mr. McCullough

Plaintiffs CAUSE 3:04CV-0274RM

v.

Scott Hall, et al

Defendants

OPINION AND ORDER

Mrs. McCullough and Mr. McCullough, *pro se*, voluntarily dismissed this case under Fed. R. Civ. P. 41(a) on October 20, 2004. They now move for leave to reopen this case, and accompany their motion with a writ of error appealing the magistrate judge's June 2004 order denying their motion to remand. The McCulloughs ask the court to reopen the case, review and reverse the magistrate judge's order, and remand this case back to the St. Joseph Superior court for further proceedings.

The magistrate judge denied the McCulloughs' timely motion to remand because he concluded their motion gave no basis for remand, and because their complaint stated multiple claims
based on federal constitutional and statuary provisions which made the case removable under 28 U.S.C. § 1441(b). After reviewing the McCulloughs' motion the court agrees with the magistrate judge's analysis and decision to deny the motion to remand. Their motion didn't state any valid legal reason for the remand and the magistrate properly denied it.

The McCulloughs' now challenge the magistrate's

decision-12 months later-on several grounds, including a challenge to the magistrate's authority to rule on a motion to remand under U.S.C. § 636(b)(1)(A). Whether the magistrate was authorized to issue his order is a question on which court have disagreed,1 but one that the court needn't resolve today. Even if the magistrate judge lacked authority to rule on the McCullough' remand motion, this court would have simply treated the magistrate's order as a Report and Recommendation. *See* Vogel v. USOffice Products Co., 258 F.3d 509,517(6th Cir. 2001) ("the opinion accompanying the magistrate judge's April 1999{remand} order should be treated as "proposed findings and recommendations"). Because the McCulloughs' motion stated no valid basis for remanding the case, the court would have adopted the magistrate's order in full.

The court must "disregard any error or defect in the proceeding which does not affect the substantial rights of the parties "Fed. R. Civ. P 61. Even if the magistrate erred by ruling on the remand motion(and the court doesn't answer that question today), such error was harmless because this court would also have denied the motion to remand. Because the error, if any, was harmless, Rule 61 prohibits the court from disturbing the magistrate's order.

the McCulloughs also raise other objections to the case's removal. They raised none of these arguments in their initial motion to remand, but the court will address one of them because it purports to challenge the court's subject matter jurisdiction. *See* 28 U.S.C. § 1447(c) (affording parties 30 days after a notice of removal is filed to lodge their objections in a motion to remand, but allowing objections to subject matter jurisdiction to be raised any time before final judgment).

They say the court lacks subject matter jurisdiction because 28 U.S.C. § 1445(d) forbids removal of state court

actions arising under § 40302 of the Violence Against Women Act of 1994. [2] The argument can't succeed because the McCullough's complaint can't be construed to state a claim under VAWA; it simply contains no suggestion of any crime of violence against Mrs. McCullough, let alone one motivated by hostility to her gender. In any event, 28 U.S.C. § 1445(d) is now moot; there can be no civil action arising under section 40302 of the Violence Against Women Act of 1994 because that , held unconstitutional in United States v. Morrison, 529 US 598, 627(2000).

The McCulloughs also raise two other discernible arguments. They ask the court to exercise its discretion and remand the case because, they say, state law issues predominate over federal ones. They also contend the removal was improper because not all of the defendants joined the notice of removal. Neither of these arguments undermines the court's subject matter jurisdiction, and the McCulloughs have waived both of them by not raising them within 30 days after the notice of removal was filed. *See* 28 U.S.C. § 1447(c).

For all the reasons stated above, the McCulloughs' motion for leave to reopen this case for purposes of reviewing the magistrate's denial of their motion to remand [docket no. 51] is DENIED.

SO ORDERED>

ENTERED: June 14, 2005

/s/ Robert L. Miller, Jr.

Chief Judge

US District Court

cc:P.McCullough, H. McCullough

[1] *See* Meier v. Premier Wine & Spirits, Inc. F.Supp.2d (E.D.N.Y. 2005), 2005 WL 1253959 at* 1(May 27, 2005)(collecting cases showing majority of district court to address issue have concluded that magistrates judges have authority to rule on motions of remand, but that the three federal courts of appeals (3d, 6th and 10th Circuits) to address the issue have reached the opposite conclusion).

[2] Codified at 42 U.S.C. § 13981 and held unconstitutional as being beyond congress' power to enact legislation under § 5 of the Fourteenth Amendment and the Commerce clause in United States v. Morrison, 529. US 598, 627(2000)

APPENDIX C
STATE COURT STOPS PETITIONERS' CAUSE OF ACTION

STATE OF INDIANA IN THE ST. JOSEPH SUPERIOR COURT
MISHAWAKA DIVISION
ST. JOSEPH COUNTY
MRS. MCCULLOUGH
MR. MCCULLOUGH
Plaintiffs
CAUSE NO. 71D06-0403-CT-00063
ORGANIZATION ENTITY
SCOTT HALL ORGANIZATION
ENTITY, et al.

Defendants
ORDER

Plaintiffs appeared in person and pro se, Defendants Jarret, Miscamble and Moreau Seminary appeared by counsel, Richard A. Nussbaum, II, Defendant Malloy appeared by counsel, Damon R. Leichty, and all remaining Defendants appeared by counsel, Scott A. Loitz, On January 20, 2005, for further hearing on the Motion to Dismiss filed October 8, 2004.

1. This case was filed in this Court by Plaintiffs on March 16, 2004. On April 26, 2004, certain Defendants filed their Notice of Removal, removing the case to the United States District Court for the Northern District of Indiana. Plaintiffs apparently filed in the United States District Court for the Northern District of Indiana, their Motion to Remand the case to this Court. That Motion would appear to have been timely filed under 28 U.S.C. Sec.1447(c). Plaintiffs Motion to Remand was denied.

2. Plaintiffs filed their Notice of Voluntary Dismissal without prejudice in the federal court action on October 20, 2004.

3. Plaintiffs now complain in this Court of various errors alleged to have occurred in the federal court proceeding, including their complaint that removal of this case to federal court was improper, and their challenge to the authority of the federal magistrate who denied their Motion to Remand and who may have presided in other matters with respect to this case while it pended in federal court. Plaintiffs assert that due these alleged defects this Court retains jurisdiction in this case, not withstanding Plaintiffs voluntary dismissal of the federal action.

4. The avenue open to the Plaintiffs to challenge the denial of the Motion to Remand was in the federal court, either by way o writ of mandamus or on direct appeal following the resolution of the case on its merits. This Court has no authority or jurisdiction to entertain Plaintiff's challenge to the denial of the Motion to Remand, the challenge Plaintiffs raise about authority of the federal court magistrate, nor other alleged defects in the federal court proceeding.

5. Once this case was removed to federal court, this Court lost jurisdiction in the matter until the case may have been remanded to this Court. The voluntary dismissal of the case while it pended in the federal court left the federal court without any case to remand to this Court and left this Court with no case over which to resume jurisdiction or, for that matter, to dismiss upon Defendant's Motion.

6. it is therefore determined that no further proceedings remaining to be conducted in this case.

7. It is therefore ordered that pursuant to T.R. 77(G) the records of the Clerk of the Court shall designate this file as a "decided" file and maintain it as directed by the Administrative Rules of the Indiana Supreme Court.

So ordered this 21st day of January 2005.

Original signed by
S/Jenny Pitts Manier
Judge, St. Joseph Superior Court

cc: H. McCollough
P. McCollough
D. Leichty
S. Loitz
R. Nussbaum, II

APPENDIX D
MAGISTRATE JUDGE'S ORDER IN THE US DISTRICT COURT
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

CAUSE NO. 3:04-CV-0274-RM

Mrs. McCullough
Mr. McCullough

Plaintiff(s)

v.
Scott Hall, et al.
Defendants

ORDER

Plaintiffs Mrs. McCullough and Mr. McCullough, proceeding *pro se*, initiated the present action on March 16, 2004, in the Superior Court of St. Joseph County, Indiana. Plaintiffs' complaint is over eighty pages in length, names seventeen separate defendants, and contains multiple causes of action including allegations under the First Amendments, the Americans with Disabilities Act, and various other federal and state statues. Defendants moved the case to this Court on April 26, 2004, pursuant to 28 U.S.C. par 1441(b). On May 6, 2004, Plaintiffs filed a motion to remand the case to state court. This Court may rule on Plaintiffs' motion pursuant to its referral and 28 U.S.C. par 636(b)(1)(A).

Plaintiffs' motion gives no basis for remand, merely stating the matter should not have been removed. Read liberally, Plaintiffs' complaint contains allegations under several federal statues, allowing for removal under Section

1441(b). Because removal is proper in this case, Plaintiffs' motion [Doc. No. 10] is **DENIED**

SO ORDERED.

Dated this 7th Day of June, 2004.

S/Christopher A. Nuechterlein
Christopher A. Nuechterlein
United States Magistrate Judge

cc: Chief Judge Miller
McCullough
Counsel of Record

APPENDIX E
ORDER OF RETENTION

IN THE STATE OF INDIANA MISHAWAKA
DIVISION ST. JOSEPH COUNTY
CAUSE NO. 71D06-0403-CT-00063

McCullough

vs. ORIGINAL STAMPED
SEPTEMBER 29, 2004
Diocese of Ft. Wayne-
South Bend et al

Original Stamped by Clerk of the Court
ORDER
The plaintiffs **X** appear pro se; ___ does not appear
The defendant/respondent__ appears by counsel; **X** does not appear
Hearing is held concerning plaintiffs'/ petitioner's Motion to Retain
following Notice of Dismissal under T.R. 41(E).
The plaintiffs'/ petitioner's motion is:
A. (**X**) Granted. Dismissal is withheld, subject to the condition that the plaintiffs/ petitioners diligently prosecute this lawsuit.
Status conference is now scheduled for 12/21/04 at 8:30 a.m. (COUNSEL MAY APPEAR BY TELEPHONE CONFERENCE CALL)
B.___ Denied
A copy of this Order is mailed to Mr.+ Mrs. McCullough: 2043 South Bend Ave South Bend, IN. + to Attorney Loitz
Dated 9/29/04 S/ William C. Whitman, Judge
St. Joseph Superior Court
Mishawaka division

APPENDIX F

List of the Locations of Relevant Federal and State Records

1. Mr. Gino Agnello, Clerk of the US Court of Appeals for the Seventh Circuit
219 S. Dearborn Street
Chicago, Illinois 60604
Appeal No. 05-3090--Briefs, Motions, and Factual Appendix

2. Mr. Stephen Ludwig, Clerk of the US District Court for Northern Indiana-South Bend Division
204 S. Main St.
South Bend, IN. 46601
Cause No. 3:04 CV 274 RM--Motions, Factual exhibits and Video Tape exhibits

3. Mr. David Lewis, Clerk of the Indiana Court of Appeals
220 W. Washington St.
217 State House
Indianapolis, IN. 46204
Appeal No. 71A05-0502-CV-0100--Petition for Transfer to the State Supreme Court, Briefs and Factual attachments

4. Ms Rita Glenn, Clerk of the Superior Court of St. Joseph County
219 Lincoln way West
Mishawaka, IN 46545
Cause No. 71D06-0403-CT-00063--Amended Cause, Motions and Factual exhibits

APPENDIX G

PETITIONERS' NOTICE OF VOLUNTARY DISMISSAL IN US DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Mrs. McCullough, pro se
and
Mr. McCullough, pro se
Plaintiffs,

CAUSE NO. 3:0:4 CV-0274RM

v.
One Organization Entity respondent
Organization Entity Scott Hall

Defendant

PLAINTIFF MRS. MCCULLOUGH AND PLAINTIFF MR. MCCULLOUGH'S NOTICE OF VOLUNTARY DISMISSAL OF CAUSE NO. 3:04 cv 274-RM WITHOUT PREJUDICE

Pursuant to Federal Rules for Civil Procedure, Rule 41(a)(1), Voluntary Dismissal: Effect thereof, By Plaintiff, by Stipulation. Subject to the provisions of Rule 23(e), of Rule 66, and of any statue of the United States, an action may be dismissed by plaintiff without order of court.

Plaintiff(s) Mrs. McCullough and Mr. McCullough, pro se submit this notice of voluntary dismissal of Cause

3:04cv274-RM, without prejudice.

1. This notice is based on the rule of necessity, the good of the common welfare, in behalf Roman Catholic Church in Rome Italy Her Members who are the Body of the Church and in behalf if the Conference of United States Catholic Bishops.

s/Mrs. McCullough October 20, 2004
Mrs. McCullough pro se
2043 South Bend Ave.
Suite 361
South Bend, IN 46637
1-574-514-5162

s/Mr. McCullough October 20,2004
Mr. McCullough pro se
2043 South Bend Ave.
Suite 361
South Bend, IN 46637
1-574-514-5162